



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Summary record of the 2132nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 16 February 2012, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Fourteenth to sixteenth periodic reports of Israel (continued) (CERD/C/ISR/14-16; CERD/C/ISR/Q/14-16)

1. *At the invitation of the Chairperson, the delegation of Israel took places at the Committee table.*
2. **Mr. Leshno-Yaar** (Israel) recalled the recent rocket attacks launched from Gaza against Israeli civilians, which had been condemned as acts of violence by the United Nations High Commissioner for Human Rights. Such terrorist attacks were a daily reality in Israel. The issue of Durban, raised by members of the Committee, was an “open wound” for Israel. He quoted Mr. Tom Lantos, who had referred to Durban as “the most sickening and unabashed display of hate for Jews” since the Nazi period. The Durban process, including the preparatory meetings and NGO forum, had been marked by shameful acts of intolerance and anti-Semitism, demonizing Israel and slanderously accusing it of apartheid and genocide. Justice Richard Goldstone had described accusations made by the Russell Tribunal as slander, and stated that apartheid, as defined under the 2002 Rome Statute of the International Criminal Court, did not exist in Israel; although the situation in the West Bank was complex, there was no intentional and systematic regime of domination or oppression of a single group.
3. His Government recognized the importance of an international coalition to combat racism and wished to play a part in such efforts. However, it viewed the Durban process and the Durban Declaration and Programme of Action as discredited, and proposed the establishment of a new coalition to eliminate racism.
4. **Mr. Zemet** (Israel) said his Government did not agree that the International Convention on the Elimination of All Forms of Racial Discrimination applied to the West Bank or Gaza, as no special declaration had been made extending the application of that Convention to those areas, which lay outside Israeli national territory. The Government had been called upon to consider the relationship between the law on armed conflict and human rights law, and although it recognized that a connection did exist, in the current situation the two legal systems were distinct and applied under different circumstances. As a result, Palestinians did not exist in a state of “legal limbo” but were subject to the law on armed conflict, as codified in the Geneva Conventions and in international law.
5. The changing reality in recent years, such as the disengagement initiative leading to the rise of a Hamas-led terrorist administration in Gaza, meant that Israel did not have effective control of Gaza, and responsibility for the civilian population lay with Hamas. In the West Bank, various agreements had resulted in the vast majority of Palestinians coming under Palestinian jurisdiction.
6. The security barrier was a self-defence measure, designed to protect the lives of Israeli citizens, a concept supported by a ruling of the Supreme Court of Justice, which had disagreed with the advisory opinion of the International Criminal Court and concluded that the barrier was consistent with the provisions of article 43 of the 1907 Hague Convention permitting all action necessary to guarantee security.
7. **Ms. Ben-Ami** (Israel), responding to the charges of apartheid which had been levelled against her country, said that such efforts to condemn and demonize Israel bore no relation to the historical truth of South Africa’s past or the current situation in the Middle East, constituted a slander against Israel and belittled the suffering of the people of South Africa. With regard to Arab Israelis, there was certainly room for improvement in order to

achieve the goal of integration, but a great deal had already been accomplished. Arabs could live and work where they chose, had access to services such as health care, and held posts in a range of institutions and public bodies, including the Supreme Court and the Knesset. Of course, racist attitudes did exist in Israel, as in many other countries, but in terms of the degree of recourse to which minorities had access in order to correct injustices, Israel's record was excellent.

8. With regard to allegations of apartheid in the West Bank, such a label represented, at best, a distortion of reality. The situation was complex and involved hostility and suspicion on both sides. Israel's actions, designed to manage a volatile situation and preserve the rule of law, were in accordance with international humanitarian law, and included non-violent self-defence measures such as the security fence, roadblocks and traffic control. All such measures were supervised by the Supreme Court, to which all Palestinians had recourse, to ensure proportionality.

9. Arabs living in Israel had the same rights and privileges as Jewish Israeli citizens, and lived on the Israeli side of the fence. Therefore, any division was based not on race, but on citizenship and past record of terrorist behaviour. Quoting a statement by the President of the Supreme Court made in 2010, she also wished to point out that "not all distinctions implied improper discrimination and not all discrimination amounted to apartheid".

10. **Mr. Abu-Haya** (Israel), referring to the economic situation in Gaza, said that, in spite of the ongoing armed conflict there, his Government had liberalized its land policy towards Gaza, and all civilian goods were permitted to enter the area. According to ILO statistics, unemployment in Gaza had fallen, the GDP had increased and growth had been observed, particularly in the construction industry. Israel worked together with the United Nations and various other bodies on a wide range of projects in various fields, including education – a priority, infrastructure, health care, housing and road construction.

11. Large numbers of exit permits were issued daily, allowing Palestinians to travel for business. Agricultural exports had risen, training programmes relating to exports and packaging had been implemented, and approval had been obtained for the export of furniture and textiles, although problems on the Palestinian side and low demand had prevented the expansion of those sectors.

12. **Mr. Karin** (Israel), referring to the inapplicability of the Convention to the West Bank, stated that the Convention covered only racial discrimination, and explained that any distinctions made were based on security grounds and were not racially motivated. Freedom of movement was not an absolute right and needed to be balanced against other rights. The guiding principles followed by the military commander in that area related to overriding security considerations, and any restrictions were subject to the test of proportionality, with specific difficulties relating to access to property or impact on livelihoods taken into account. The vast majority of roads were open to all, and only those leading to Israeli settlements or in closed zones were restricted. Certain restrictions only applied to Israelis, such as a ban on entry to Zone A.

13. The Supreme Court had issued two landmark judgements relating to freedom of movement. As mentioned earlier, the Court had ruled in 2009 that route 443 should be reopened to Palestinians, as free movement was a "basic liberty" and the military command could not enforce a total ban. There was also a ruling concerning the complex permit regime in place in certain areas, including the "seam zone", which posed the greatest security risk. In line with a Supreme Court ruling of April 2011, which had authorized the military commander to close certain areas on security grounds, a complex permit regime ensured a proper balance of needs.

14. With regard to the enforcement of planning laws, all legislation — including planning regulations — was enforced by the military commander, under article 43 of the

Hague Convention. That enforcement was limited to Zone C, as planning in Zones A and B fell under Palestinian jurisdiction.

15. A number of changes had taken place to adapt planning policies and regulations to the needs of the Palestinians, covering issues such as access to planning procedures, criteria for the regulation of illegal building clusters, the implementation of planning decisions, procedures for raising objections, and the provision of planning services to Palestinian planners and engineers. As far as enforcement was concerned, Israel was not the only country to take measures against the illegal construction of buildings; action was only taken where building work had taken place without a permit or conflicted with existing planning regulations. Planning subcommittee hearings were held before any decisions were taken, and all interested parties were invited to attend. Additional hearings were held in the event of any planning changes. It was possible to appeal planning decisions, including by means of a petition to the Supreme Court.

16. As far as the issue of separate legal systems in the West Bank was concerned, Israeli law did not apply directly to the West Bank, which fell under the jurisdiction of military and international humanitarian law. Offenders were tried in military courts, in line with international law. In practice, it was possible for Israeli courts to acquire jurisdiction under certain, widely recognized connection criteria, and some cases could be tried in Israeli courts.

17. With regard to the age of majority, a military juvenile court had been established to try minors separately from adult defendants and provide appropriate care and legal defence services. The age of majority had been increased from 16 to 18, and new provisions afforded a higher level of protection to minors, for example relating to parental notification or questioning rights.

18. **Mr. Horev** (Israel), referring to disparities in access to health care, said that the issue was of paramount importance to the Ministry of Health, and constituted one of its main areas of activity. The Ministry had produced an action plan and his division had an official solely charged with the creation and coordination of measures to reduce such disparities. A variety of policy tools were used to reduce disparities in access to care, including through the elimination of economic and cultural barriers. Health-care organizations were encouraged to develop infrastructure in peripheral areas and to invest in health interventions, inter alia in the Bedouin communities in the Negev region.

19. Acknowledging the importance of cooperation with NGOs, he said that the Ministry of Health held regular round-table meetings with representatives of eight NGOs in order to discuss health policy issues, focusing on aspects such as provision for cultural differences in the health-care system. On two occasions, a coalition of NGOs had been established to promote and assist in the implementation of reforms in the area of dental care for children, especially those from vulnerable groups, and long-term health care.

20. The Ministry also cooperated with the leaders of minority sectors, as shown by the regular forums it held with imams in the Negev, which helped it to take account of cultural and religious differences effectively and appropriately. It had recently distributed to all Israeli health-care organizations a circular on cultural and linguistic adaptation and accessibility in the health-care system, which described the standards and norms to be implemented by all organizations. The disparities in the area of health care in many cases reflected differences in social behaviour, lifestyle, culture and beliefs likely to affect attitudes towards preventive behaviour and the way health services were utilized.

21. **Mr. Diab** (Israel), describing the efforts undertaken to reduce disparities between the Arab and Jewish populations in the area of education, said that as a response to the natural increase in the Arab population the Government had, in the period 2007–2011, financed the construction of 7,900 school classrooms at all levels; 37 per cent of them had

been for Arab pupils, for whom there were now more classrooms than were needed. In response to the increase in the Jewish population 4,905 classrooms had been built, whereas 5,180 classrooms were actually required, representing a shortfall of 275 for Jewish pupils. The budget allocated in the period 2007–2011 for the construction of facilities for Arabs had been approximately US\$ 500 million, some 25 per cent of which had been for the Bedouin in the south.

22. A system of preferential financing had been introduced, targeted at schools with socio-economic difficulties, in order to address the drop in the number of pupils at primary and secondary levels. At primary level, approximately 70 per cent of the relevant budget had been assigned to Arab pupils, and at secondary level that figure was approximately 50 per cent. However, the actual percentage of Arab pupils was, at both levels, only 30 per cent. An effort had been made to link all schools to the Internet, and to provide laptops to teachers and tactile screens for all pupils, for which a budget of US\$ 120 million had been allocated for the school year 2010/11.

23. Education was compulsory up to the age of 18. Until 2007/08, under the Compulsory Education Law, education had been compulsory up to and including grade 10. The Law had been amended and grades 11 and 12 were now also compulsory. The goal had been to reduce school dropout rates.

24. Some 70,000 extra teaching hours had been provided for to assist students from poor socio-economic backgrounds, at a cost of US\$ 95 million, with 36 per cent of those hours allocated to the Arab population. Extra hours had also been allocated to the teaching of Arabic as a mother tongue. A five-year plan had been established, with an annual budget of US\$ 21 million, for the recruitment of highly-skilled teaching staff, which had led to improved school results across the board, including at baccalaureate level. Parents could enrol their children in any school of their choice, in their geographical area, regardless of the language of instruction.

25. **Mr. Assaf** (Israel) said that the purpose of the Economic Development Authority for the Arab, Druze and Circassian Sectors, attached to the Prime Minister's Office, was to bridge the socio-economic gap between the different population groups in Israel, to which task the Government had allocated US\$ 1.3 billion in the past two years. The Authority worked in the following four areas: upgrading the business sector; empowering municipalities; employment and human resource development; and access to higher education. The budget of the five-year plan to improve access to higher education for minorities had been increased twelvefold from its initial budget of US\$ 6.7 million, thus demonstrating the importance attached to access to higher education for minorities. Employment of women from the minority sectors was one of the Government's stated economic goals, and 77 per cent of women graduates from minority groups were employed.

26. The total budget allocated for the promotion of employment was US\$ 1.5 billion. As part of its efforts in that area, the Government had decided to establish 22 employment centres in minority municipalities; 5 had already opened. An extensive budget had also been allocated to the development of regional industrial and commercial areas in order to create jobs. To make it easier for women to work, the Government subsidized 95 per cent of all child day care in minority municipalities. Employment subsidies to promote the recruitment of persons from minority sectors were also planned.

27. In the business sector, a microfinance fund had been established, based on the ideas of Nobel Prize winner Professor Muhammad Yunus. The fund was of particular benefit for women from poor socio-economic backgrounds. With regard to the five-year plan for the economic development of minority municipalities, the Authority's approach was to increase the municipalities' own power and economic viability, through urban planning, land

development subsidies and the provision of public transport, which helped to increase employment.

28. The issue of sewage was important, and work was under way to find sewage solutions for all minority municipalities. Currently, four of them were connected to the main sewage system.

29. **Mr. Radzyner** (Israel) said that the Foreign Workers Law had been amended on 24 April 2010, redistributing its enforcement powers among the relevant authorities. The Ministry of Industry, Trade and Labour was solely authorized to carry out criminal supervision and enforcement of foreign workers' rights that related to general labour obligations such as minimum wage, illegal deductions from wages and the obligation to provide detailed labour contracts. The Population and Immigration Authority at the Ministry of the Interior was solely responsible for providing foreign workers with employment and recruitment permits and visas. It was also responsible for the criminal supervision and enforcement of regulations relating to the employment of foreign workers.

30. Foreign workers were not bound to any specific employer, and in 2011 2,389 workers had freely changed employers. Under a 2011 amendment to the Citizenship and Entry into Israel Law, most workers were allowed up to 90 days after leaving an employer, during which they could remain legally unemployed in Israel while seeking alternative employment. In 2011, the Population and Immigration Authority's enforcement administration had opened 1,550 cases against foreign workers' employers and imposed 1,488 fines. In 2011, 52 investigative operations had been opened against employers of foreign workers by the enforcement division of the Ministry of Industry, Trade and Labour. The investigation of an additional 62 cases had been completed and a decision on indictments was pending.

31. In 2011, two bilateral agreements regarding the recruitment of foreign workers had been ratified by Israel and additional negotiations were under way.

32. The Government had taken major steps to accelerate the Arab population's representation in the civil service, including allocating designated jobs to Arabs, modifying entry tests for Arab candidates, and raising awareness of civil service employment among the Arab population. In January 2012, 7.8 per cent of civil servants had been Arabs, Druze and Circassians, compared to 6.97 per cent in 2009. In September 2011, the Civil Service Commissioner had reminded all directors of ministries of their legal obligations under the Civil Service (Appointments) Law with regard to representation of the Arab population. In January 2012, a new recruitment procedure had been introduced with the aim of ensuring that at least 10 per cent of civil servants were Arabs. Following the measures described in the periodic report, as of January 2012 there had been adequate representation of the Arab population in 47 of the 78 relevant government corporations. The proportion of Arab women serving as directors in government corporations had increased in recent years to 4 per cent, compared to 1.9 per cent in 2007.

33. The length of his country's periodic report had been the result of an attempt to provide background to the many positive developments described; the Government would do its utmost to make the following report shorter.

34. **Ms. Marks** (Israel) said that between 2000 and 2006 approximately 38 of the 172 terrorist attacks in Israel had been perpetrated by individuals who had been carrying Israel identity cards pursuant to family unification procedures allowing their free movement between the West Bank and the Gaza Strip and into Israel. Following the wave of terrorist attacks in March 2002, the Government had decided in May 2002 to temporarily suspend the granting of legal status in Israel to those citizens. Subsequently, the Citizenship and Entry into Israel Law had been enacted in July 2003, initially for a period of one year, but in view of the continued security threat it had been renewed at regular intervals and was

currently valid until 31 January 2013. A series of amendments to the Law in 2005 and 2007 had expanded the humanitarian exceptions it provided for. Under those amendments the Minister of the Interior had authorized thousands of permit-holders to stay in Israel.

35. The Law's constitutionality had been scrutinized and upheld by the majority of the Supreme Court sitting in an extended panel of 11 judges. A number of recent challenges to the constitutionality of the Law had been rejected, with both the majority and minority decisions affirming that the purpose of the Law was to mitigate the security threat posed by terrorist organizations seeking to harm Israeli citizens.

36. Since 2009, the Department for Special Affairs in the State Attorney's Office had authorized indictments in numerous cases of offences motivated by racism, as well as investigations into a number of cases of incitement to racism, including press statements by rabbis in relation to minority populations in Israel. Indictments had also been filed on incitement to racism on the Internet. No indictment had yet been served regarding associations that incited racial hatred. Israeli criminal law required mens rea in the prosecution of cases of incitement to racial hatred, and the authorization of the Attorney General for serving an indictment in such cases. The sole exception was that, under legislation on the prevention of violence in sport, the State could prosecute in cases of racist comments made during sports matches without proving mens rea. She confirmed that police were investigating the case of racist comments made by a bus driver about the Ethiopian population in Israel. The investigation in connection with the book *Torat Hamelech* had been completed and a decision by the Attorney General was pending.

37. The issue of law enforcement, including violence by residents of the Israeli settlements, was given special attention by an inter-ministerial team on incitement, uprisings and ideological crimes. Efforts to prevent criminal activity included administrative measures, such as orders based on specific intelligence prohibiting access by certain Israelis to particular areas, and orders establishing closed military zones, which could apply to Israelis only, to Palestinians only or to both groups. In 2011 and 2012, restraining orders had been issued against a large number of Israeli citizens, who were prohibited from entering the West Bank on account of the security risk. Major efforts were also made to prevent incidents involving friction between Israelis and Palestinians, especially during sensitive times of the year such as the olive harvest.

38. According to recent police data, a considerable number of police files had been opened in the West Bank. A total of 141 cases of violence by Israeli offenders against Arabs had been recorded in 2011. The police had arrested 70 suspects for disruption of public order and had issued 17 indictments against 34 suspects. The National Unit for International Investigations had been involved in police investigations that had given rise to 23 arrests and 14 indictments of Israeli suspects. In 2010, 290 cases of alleged offences by Israeli citizens against Palestinians had been submitted to prosecution offices and 83 indictments had been issued.

39. In February 2012, the District Police had been expanded by 80 officers. The relevant budget of NIS 20 million (\$5.4 million) was in the final stages of approval. An additional border guard company had also been assigned to the West Bank. As a result, there had already been a reduction in offences.

40. In March 2011, the Cooperative Society Ordinance (amendment No. 8) had been amended in order to regulate the function of the admission committees for the acceptance of new candidates in agricultural and communal localities in the Negev area and Galilee. According to the Ordinance, an admission committee could reject a new candidate on the basis of criteria such as lack of economic ability to build a house within the period set or suitability for life in the community, based on professional examinations. The admission

committee could not reject a candidate based on unlawful grounds such as race, religion, gender and nationality, inter alia.

41. Two petitions challenging the constitutionality of amendment No. 8 were pending before the Supreme Court. On 25 January 2012, the State had submitted a response in which it argued that amendment No. 8 reflected an appropriate balance between the need to ensure the continuous development of small communities in peripheral areas of Israel by permitting the acceptance of new community members who would contribute to the community, and the State's responsibility to ensure that land was allocated on a reasonable and non-discriminatory basis. The State had also emphasized that the amendment established a framework for decision-making, but that individual decisions could be challenged in the district courts and, upon appeal, in the Supreme Court.

42. **Mr. Lindgren Alves** said that he had taken note of the delegation's response to the conclusions of the Russell Tribunal on Palestine. The Committee itself had not stated that the situation in Israel constituted apartheid.

43. He regretted the delegation's apparent endorsement of a distorted view that was normally peddled by one-sided politicians and superficial press articles, namely that anyone who criticized Israeli policies was anti-Semitic. As someone who had attended the World Conference against Racism in Durban, he was also surprised to hear the delegation echoing the superficial views of certain people who had attended the NGO Forum convened alongside the Conference. The Durban Declaration and Programme of Action had been negotiated by State representatives and, while the negotiations had been difficult, no offences such as those mentioned had been committed. Even though the Declaration could not be supported in full by every State, it was one of the most important anti-racist documents produced by the international community to respond to the needs of a very large segment of mankind.

44. **Mr. Leshno-Yaar** (Israel) said Israel fully accepted that it was not immune from criticism. He would be the last to say that any criticism of Israel amounted to anti-Semitism.

45. His comment on the Russell Tribunal had been a quotation from an article by Judge Richard Goldstone in *The Washington Post*.

46. The Durban Declaration and Programme of Action contained a specific reference to Israel. It was the only country to be singled out.

47. **Mr. Kemal** said that he had not accused Israel of apartheid but had referred to allegations from a particular source and noted that the case concerning the West Bank seemed to be quite strong. However, he highlighted one difference between the situation in the West Bank, on the one hand, and the former situation in South Africa and the era of racial segregation in the United States. In the latter cases, the policy of segregation had been openly espoused by the State authorities. The situation in the West Bank was characterized by de facto segregation which was due, according to the delegation, to the security situation. Resources such as water were unequally distributed between ethnic groups, and peaceful citizens were subjected to a burden of inconvenience everyday as they travelled from one enclave to another. He had read about those situations in Western newspapers that could not be accused of bias.

48. **Mr. Ewomsan** requested additional information concerning the situation of the Falasha community of Ethiopian origin, who were allegedly exploited in Israel as an unskilled workforce. He asked whether the measures taken to protect them, particularly in the areas of education and health care, had begun to bear fruit and whether society's perception of them had changed.

49. **Mr. Diaconu** reminded the delegation that some State representatives attending the Durban Conference had taken action to prevent Israel-bashing. For instance, the Brazilian and Belgian delegations had sponsored a “no-action motion” which had prevented anti-Israeli amendments from being included in the Declaration, which contained many sound ideas and proposals.
50. According to the delegation, Israel had not made a declaration accepting the applicability of the Convention to the West Bank and Gaza. He pointed out that the legal basis for jurisdiction was not a declaration but the fact that Israel occupied and controlled those territories. That was a generally accepted rule of international law, which had been confirmed by decisions of the International Court of Justice and the European Court of Human Rights.
51. Israel contended that there was no segregation, but he wondered how in that case it could account for the existence of separate settlements and separate roads in the West Bank.
52. He recognized that measures were being taken to promote the economic and social integration of the Arab citizens of Israel. He enquired about action to prevent segregation in schools and asked whether any schools were bilingual.
53. He drew attention to the interrelationship between international human rights law and international humanitarian law. For instance, article 4 of the International Covenant on Civil and Political Rights clearly stipulated that a State could not derogate from a wide range of Covenant articles even during a public emergency that threatened the life of the nation. The Rome Statute of the International Criminal Court and the 1977 Protocols Additional to the Geneva Conventions protected human rights both in peacetime and in time of war.
54. Israeli criminal law was not in conformity with article 4 of the Convention because it did not contain the idea of intention or mens rea.
55. **Mr. de Gouttes** echoed Mr. Ewomsan’s comment at the previous meeting that the Jewish people, who had suffered a horrendous genocide, should be particularly sensitive to the sufferings of other peoples such as the Palestinians.
56. The Committee had frequently noted that one of the structural causes of racism was poverty and economic underdevelopment. Socio-economic discrepancies were one of the underlying reasons for the conflict between Israel and the Occupied Palestinian Territory, and for the persistent sense of discrimination among the Palestinians and other minorities. The Israeli Government should therefore take vigorous action to narrow the economic gaps between the different segments of the population.
57. **Mr. Kut** (Country Rapporteur) enquired about the State party’s definition of a minority. Were the Ethiopian Jews, for instance, deemed to constitute a minority? Policies relating to municipalities in which one ethnic group constituted an absolute majority tended to create segregated communities.
58. He enquired about the division of labour between the Prime Minister’s Office, the Ministry for Minority Affairs and the State Comptroller in the area of protection against discrimination. He also asked whether any ombudsmen were active in that area.
59. He referred to a news item from an Israeli newspaper published the previous day, according to which the Minister of Justice had allegedly told right-wing activists how best to formulate pardon requests on behalf of convicted Jewish terrorists, thereby offering advice on requests that he might later be required to approve.
60. He regretted the fact that the delegation did not include a representative of the Ministry of the Interior, who would be best qualified to answer a number of questions on important issues.

61. He had been disappointed by the delegation's failure to comment on discrimination within Israel against Jewish or non-Jewish communities. Israel was a multicultural society and experience showed that variety inevitably generated intolerance towards people who were perceived to be different.

The meeting was suspended at 12.05 p.m. and resumed at 12.15 p.m.

62. **Ms. Tene-Gilad** (Israel) reiterated that there was no racial segregation within Israel.

63. The principle of equality was a fundamental principle of Israeli legislation and adjudication. The Basic Law protected basic guarantees of personal liberty within the framework of Israel's Jewish and democratic character. Furthermore, many laws emphasized the principle of equality, and the country's independent judiciary interpreted, guided and enforced their provisions.

64. Human rights protection had played an essential role in Israel from the outset, as evidenced by the Declaration of Independence, Israel's basic and ordinary laws, and Supreme Court rulings. The institutions that had been established to uphold human rights included the Ombudsman (Public Complaints Commissioner), the Commission for Equal Employment Opportunities, the Commission for Equal Rights for People with Disabilities, the Authority for the Advancement of the Status of Women, the Ombudsman of the Ministry of Health, the National Council for the Child and the Military Ombudsman. Her Government therefore considered that a designated human rights commission was not necessary at that point.

65. The Office of the Ombudsman received many complaints each year, for instance 15,000 in 2011, some of which directly related to racial discrimination or discrimination motivated by religion or colour. There had been complaints of discrimination against job applicants and of discrimination in respect of access to health care, welfare, municipal services and placements in schools. A Muslim prisoner had complained that the prison authorities failed to supply special festive food on Muslim holidays, as they did on Jewish holidays. A Druze soldier had complained that he had not been admitted to a special unit of the Israel Defense Forces because of his religion, and several complaints referred to poor infrastructure in Arab villages. The complaints were investigated by the Ombudsman, who instructed the body concerned to remedy any defects brought to light.

66. As a means of increasing accessibility to the Ombudsman for the periphery population, many of whom belonged to minorities, the Ombudsman's Office had opened several branches in close proximity to towns and villages with a high concentration of Arab and Bedouin residents or Russian and Ethiopian immigrants.

67. Several Committee members had enquired about the agreement of principle between the Israel Lands Administration and the Jewish National Fund. The changes in that regard had resulted primarily from the Supreme Court decision in the *Ka'adan* case mentioned in paragraph 66 of the periodic report. The agreement was applicable to Jewish National Fund lands, enabling such lands in the centre of Israel, which had originally been reserved solely for the Jewish population, to be transferred to any person, regardless of race, religion or any other characteristic, through a parallel assignment of lands in the Negev and the Galilee to the Fund.

68. On 11 September 2011, the plan for the housing situation in the Negev, the so-called "Prawer Plan", had been adopted by the Government. One of the main pillars of the Plan was a "Listening Stage", headed by Minister Benjamin Ze'ev Begin. The Minister had met with Bedouin representatives and paid frequent visits to the Negev to meet with other Bedouin. Moreover, the Authority for the Regularization of Bedouin Housing in the Negev held many additional meetings to explain the Plan and to listen to comments. The Minister would draw up recommendations on the basis of the comments for proposed changes to the

new bill on the implementation of the Plan, which would be submitted to the Ministerial Committee of Legislation prior to its submission to the Knesset.

69. In spite of the establishment of 8 towns and the city of Rahat for the Bedouin and the recent approval of 11 additional towns, about 70,000 Bedouin still chose to live in unauthorized villages throughout the Negev, ignoring Israel's planning authorities. The provision of services to the residents of the unauthorized villages caused many problems. Warrants were issued for the demolition of unauthorized structures. Initially, a warning was given to the person who had built the structure, who could seek to prevent demolition through judicial proceedings. Otherwise the person concerned was required to demolish the unauthorized structure and, if he or she failed to do so, the authorities would demolish it.

70. The land known as Arkib was inhabited by Bedouin tribes who had arrived in the area during the late Ottoman era mainly from Saudi Arabia and Egypt. When the State of Israel had been established, private land transactions and claims of ownership had been subjected to approval, acknowledgment and registration by the authorities, as in all countries under Ottoman and then British rule. Yet the Bedouin had ignored the laws and the authorities had subsequently regarded the land as State land.

71. The area of Arkib had been expropriated by the State and used for housing, agriculture and other purposes. The policy had been pursued concurrently with the transition of Bedouin society over the years from semi-nomadic to permanent housing. The Bedouin now wished to settle, as seen in the case of Rahat and all over the Negev.

72. Until 1998 the lands south of Rahat had been used by Bedouin who had received them from the State. In 1998 Bedouin residents of Rahat from the El-Tory tribe had decided to invade the land. The initial agricultural invasion had given rise to 45 unauthorized buildings. After many years of legal proceedings between the State and the Bedouin families of El-Tory concerning illegal possession of the land, the inhabitants of so-called El-Arkib village had been evicted in July 2010.

73. El-Arkib was not a village but an area that had been invaded by members of the tribe in 1998. The Israel Lands Administration had evicted Bedouin families of El-Tory from the area in accordance with the law, but the invaders had returned time and again despite the availability of other solutions. The courts had repeatedly rejected requests to overturn or delay the eviction order.

74. The Bedouin were not classified as an indigenous people by her Government. Their way of life and seasonal migration meant that it was difficult to recognize their connection to the lands of the Negev; their basic self-identification was to their tribe and not to their land. Furthermore, it was unclear whether there was an intention on their part to preserve, develop and hand down their lands and ethnic identity in accordance with their culture, society and legal system.

75. Since the majority of the population in Israel was Jewish, minorities were defined as persons who were members of other religious groups.

76. **Mr. Diab** (Israel) said that the Ministry of Education had treated the issue of Ethiopian children as a matter of priority and significant resources had been allocated in order to help them integrate into society. Those children were assimilated into schools, given additional hours of schooling to enable them to keep up with classes and helped to participate in a full range of activities. During the period 2008–2010, the number of children of Ethiopian descent obtaining the baccalaureate had increased by 30.6 per cent in public schools and by 40.63 per cent in religious schools.

77. The difference between Arab schools and Jewish schools was that the language of instruction was Arabic in the former and Hebrew in the latter. Nevertheless, in those cities where there was a mix of population, Arab students had the opportunity to attend Jewish

schools if they wished, and vice versa. There were also a number of bilingual schools which were aimed at promoting understanding and friendship among Israeli citizens, as detailed in the State party report (CERD/C/ISR/14-16, paras. 850–854). In general, parents were free to enrol their children in the school of their choice.

78. **Mr. Horev** (Israel), replying to a question about the Falash Mura, said that their case provided a good example of how the Government worked with NGOs to adapt services to the specific needs of different population groups. Written materials were prepared in their language, Amharic, and NGOs provided interpretation services to facilitate consultations with health professionals. Intervention plans were designed with their particular needs in mind; for example, a plan had been implemented for treating asthma, which was particularly prevalent among the Ethiopian population. In addition, training courses were provided to raise awareness among health professionals of the specific needs and cultural characteristics of that group.

79. **Mr. Assaf** (Israel) said that the Prime Minister was currently in charge of minority affairs. That meant that the Economic Development Authority for the Arab, Druze and Circassian Sectors, which was attached to the Prime Minister's Office, had direct access to decision makers at the highest level. At the same time, the Authority maintained close links at the grass-roots level and met regularly with local leaders and NGOs to review the implementation of affirmative action plans.

80. **Ms. Marks** (Israel), replying to a question about mens rea, said that in some cases it might be appropriate to define racism with respect to the consequences and not to consider the intention behind the action. However, in the case of criminal law the position of the Israeli legislature was that a fine balance must be struck between the protection of freedom of speech, on the one hand, and the fight against racism, on the other. That reflected the general principle of criminal law that criminal liability required mens rea. The Israeli executive operated accordingly.

81. **Mr. Zemet** (Israel), replying to Mr. Diaconu's question about the applicability of the Convention in the Occupied Palestinian Territory, said his Government did not claim that it had no responsibility for the population in the West Bank. It claimed only that a different set of rules applied in a situation of belligerent occupation. It recognized that there was a profound connection between international human rights law and the law of armed conflict, and that there might be a convergence between the two bodies of law in some respects.

82. **Mr. Karin** (Israel) said the understanding that all human rights conventions were territorially bound was connected to the use of the term jurisdiction in the relevant provision of all such conventions. In international law, jurisdiction was commonly understood to be connected to the notion of sovereignty and by extension to that of territoriality. Such a position was not unique to Israel; a similar approach had been taken by some other States in recent reports to human rights treaty bodies in which areas in similar situations to that of the West Bank had not been addressed.

83. The co-application of human rights law and international humanitarian law was a thorny issue. The balance between rights and interests at the core of each of those systems of law was different; therefore, when those systems were applied to similar situations, their outcomes were different. That was the heart of the notion of *lex specialis* that had been established by the International Court of Justice in its 1996 advisory opinion on the legality of the threat or use of nuclear weapons. His Government did not accept that both systems applied in the present case, but if they had both been applied, different results would have been achieved.

84. With regard to the principle of de facto segregation or what might be termed a results-oriented test of the application of article 3 of the Convention, he said that such an

approach was not compatible with the *raison d'être* of the Convention or consistent with the Human Rights Committee's general comment No. 18 on non-discrimination, which stated that not every differentiation of treatment would constitute discrimination if the criteria for such differentiation were reasonable and objective and if the aim was to achieve a purpose which was legitimate under the Covenant. It was therefore necessary to consider the motives and content of differential treatment before arriving at any conclusion, including that of *de facto* segregation.

85. In that regard, he wished to refer to the issue of freedom of movement. It was important to note that the number of roadblocks and checkpoints in the West Bank had fallen dramatically; since 2007, 27 checkpoints had been removed and 147 roadblocks eliminated. All remaining checkpoints and roadblocks were under continuous review by the civil administration and the military commander and were removed when no longer needed for security or other legitimate purposes.

86. Access to water resources was governed by the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, which contained provisions relating to the allocation of water and established a joint water committee in which all decisions must be reached by consensus. In 2009, the amount of available water for Palestinians had been 129 cubic metres per capita and consumption had been 95 cubic metres per capita; the corresponding figures in Israel proper had been 153 cubic metres and 137 cubic metres respectively. Those data did not indicate *de facto* or *de jure* segregation either implicitly or explicitly.

87. **Mr. Thornberry** asked for further clarification as to whether the concept of discrimination applied in Israeli law was based only on intention, whether there was a generic criminal law offence of incitement to religious hatred, and why the concept of indigenous peoples had been rejected in Israeli law and practice.

88. **Mr. Kut** said that he would outline some of the issues that the Committee would examine when adopting its concluding observations. They included the applicability of the Convention to all territories under the State party's effective control; the absence of general provisions concerning the right to equality and the prohibition of racial discrimination in the Basic Law; and the issue of a law on incitement to racial discrimination.

89. Particular attention would be given to a number of challenges faced by certain vulnerable groups within Israel. With regard to the Palestinians and Palestinian citizens of Israel, the Committee would consider the application of the Citizenship Law and planning and zoning measures. It would also address the situation of the Bedouin, in particular with respect to their political participation and the right to education. Issues relating to Jewish minorities would also be examined, including access to education and work, cultural perceptions and certain religious issues. With respect to migrant workers, questions remained concerning citizens of hostile States and allegations of segregation affecting the children of asylum-seekers and migrant children.

90. Other major areas of concern included the availability of remedies in cases of racial discrimination; the lack of enforcement in cases of incitement of racial hatred; and allegations of racial discrimination against asylum-seekers. Another important issue was that of the territories under the State party's effective control. He understood perfectly well the relationship between sovereignty, jurisdiction and territory; however, while legal intricacies might explain certain Government actions satisfactorily, there was a distinction to be made when they constituted a smokescreen for Government policy. The relevance of article 3 would have to be addressed, as would issues relating to planning and zoning in the Occupied Palestinian Territory, security and the protection of human rights and access to water. Committee members would also raise the issue of the occupied Syrian Golan

Heights, in particular with respect to unequal access to land and resources and family reunification.

91. He expressed concern about the deterioration of the political climate in Israel, as reflected by racism in public discourse, the actions of some ministries, the words and deeds of some members of the Knesset, and increasingly visible Jewish fundamentalism.

92. **Mr. Leshno-Yaar** (Israel) thanked the members of the Committee for their comments and questions. At the core of many of the issues that had been discussed was the geostrategic situation in which Israel had found itself during the previous seven decades; once there was peace, many of the problems would disappear. He hoped that there would soon be peace between Israel and its neighbours, so that other issues could be discussed within the framework of the Committee.

The meeting rose at 1.05 p.m.